

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

MEL M. MARIN, personally and as heir of)	Civil No.11cv1610 AJB (JMA)
the Estate of Milivoj and Eva Marinkovic;)	
)	ORDER DENYING IN FORMA
Plaintiff,)	PAUPERIS STATUS
v.)	
)	
ESCONDIDO CARE CENTER, et al.,)	
)	
Defendants.)	
_____)	

On July 21, 2011, Mel M. Marin, a non-prisoner proceeding *pro se*, filed a Motion to Proceed *in forma pauperis* [Doc. No. 2] of case number 3:11-cv-01610-AJB-JMA to this Court. Plaintiff submitted a declaration in support of a request to proceed *in forma pauperis* in accordance with 28 U.S.C. § 1915(a)(1) and Local Rule 3.2(a).

The Court finds that the Plaintiff's declaration of inability to pay costs or give security is insufficient to permit Plaintiff to proceed *in forma pauperis*. Permission to file a petition for writ of mandamus *in forma pauperis* will not be granted unless there is some merit in the petition. 28 U.S.C.A. § 1915. "To proceed *in forma pauperis* is a privilege not a right." *Smart v. Heinze*, 347 F.2d 114, 116 (9th Cir.1965). One need not be absolutely destitute to obtain benefits of statute dealing with proceedings *in forma pauperis* in federal courts. *Adkins v. E.I. DuPont de Nemours & Co.*, 335 U.S. 331 (1948). The motion, however, must state facts as to affiant's poverty with some particularity, definiteness and certainty. *Jefferson v. U.S.*, 277 F. 2d 723 (9th Cir. 1960).

1 The Plaintiff's motion to proceed *in forma pauperis* lacks merit because:


- 2 • Plaintiff has noted receiving "Social Security, disability or other welfare" but has failed
- 3 to describe the source, the amount received, and what the Plaintiff expects to continue
- 4 receiving each month.
- 5 • Plaintiff has noted receiving "Gifts or inheritances" but has failed to describe the source,
- 6 the amount received, and what the Plaintiff expects to continue receiving each month.
- 7 • Plaintiff's debts are only described as "plenty of debts."
- 8 • Plaintiff has failed to note any housing, transportation, utilities, or loan payments, or other
- 9 regular monthly expenses.

10 It is under the Court's discretion to grant or deny permission to proceed *in forma pauperis* based
 11 on the Plaintiff's claim. 28 U.S.C. § 1915(e)(2). Without further evidence, the Court lacks specific facts
 12 to find that the Plaintiff is not able to pay the filing fee under 28 U.S.C. § 1914(a). It is advised that the
 13 Plaintiff submit a current revision of the short form "Application To Proceed In District Court Without
 14 Prepaying Fees or Costs" available on the United States Courts website.¹

15 In light of this information, IT IS HEREBY ORDERED that the Plaintiff's Motion to Proceed *in*
 16 *forma pauperis* is **DENIED** and the Complaint is **DISMISSED** without prejudice. Pursuant to this
 17 Order, however, Plaintiff is granted 30 days leave to pay the \$350 filing fee required to maintain this
 18 action pursuant to 28 U.S.C. § 1914, or to submit additional documentation regarding the Plaintiff's
 19 economic status. **IF PLAINTIFF CHOOSES TO FILE ADDITIONAL INFORMATION RE-**
 20 **GARDING HIS POVERTY, HE MUST ATTACH A COPY OF THIS ORDER.**

21 IT IS SO ORDERED.

22
 23 DATED: September 29, 2011

24 
 25 Hon. Anthony J. Battaglia
 26 U.S. District Judge
 27
 28

¹<http://www.uscourts.gov/uscourts/FormsAndFees/Forms/AO240.pdf>